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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Seventh session

SUMMARY RECORD OF THE 6th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 26 November 1992, at 10 a.m.

Chairman: Mr. ALSTON

CONTENTS

Consideration of reports (continued)

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (continued)

Poland

Organization of work (continued)

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GE.92-18602 (E)

The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS (agenda item 5) (continued)

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Poland (E/1990/7/Add.9)

1. At the invitation of the Chairman, Mr. Dembinski, Mr. Kedzia, Mr. Henczel, Mrs. Niewiadomska and Mr. Wisniecki (Poland) took places at the Committee table.

2. Mr. DEMBINSKI (Poland) said that the report before the Committee covered a period in which Poland had undergone a fundamental, political, economic and social change which, for obvious reasons, had been complicated and difficult. The major part of the report referred to the period ending in 1991, during which Poland had operated under a constitutional order different from the present one. At that time, as required by the principles of communist doctrine, the economic system had been centrally planned and managed, whereas present-day Poland was a democratic State based on the rule of law and on the road to a market economy. Transformations of that magnitude were bound to evoke contradictory attitudes of support and uncertainty in the population as they experienced privatization, re-privatization, a significant deterioration in living standards and a high rate of unemployment. Additional difficulties had been caused by the collapse of COMECON and the need to adapt the national economy to free and competitive international trade. The ensuing heavy burden on the national budget necessarily limited resources for implementing social and cultural rights. Poland, consequently, could not at present afford to guarantee a satisfactory level of social and economic benefits to its population although that aspiration remained one of the Polish Government's priorities. It was hoped that democracy and economic growth would soon help to improve the situation.

3. In parallel with the ongoing process of economic change, Poland had been faced with a far-reaching transformation of its political structure requiring a revision of its Constitution, a much longer process than orginally anticipated, but which had culminated on 17 November 1992 with the signing by the President of the Constitutional Act adopted by Parliament in August of that year. Until the coming into force of that Act in a matter of weeks, Poland continued to be ruled by the 1952 Constitution, which had been substantially amended in 1989. The new Constitutional Act was based on the principle of separation of legislative, executive and judicial powers and it regulated the relationship between them. Since the Act did not cover the status of the individual, a draft constitutional Charter of Rights and Freedoms had been submitted to Parliament. It was founded on the concept of human dignity, proclaimed the protection of rights enshrined in the international instruments binding on Poland and contained legal and institutional guarantees. The Charter clearly distinguished between the subjective rights of the individual and the responsibilities of the State in the social sphere, reflecting the prevailing trend in the constitutional debate in Poland to guarantee the values protected by the International Covenants on Human Rights in the form of constitutional subjective rights,

which might be claimed before a court. Only in cases where conditions did not allow that kind of regulation would the constitutional provision take the form of a State's obligation instead of that of a subjective right, an approach in line with the obligations under the International Covenant on Economic, Social and Cultural Rights.

4. There had been a significant change in Poland's attitude to the relationship between international and domestic law. Under the 1952 Constitution, as amended in 1989, and in the light of recent jurisprudence, international norms ratified by Poland with the consent of Parliament were directly applicable in domestic law. In future, that rule was expected to apply to all the international treaties ratified by Poland, including the International Covenants on Human Rights.

5. The report (E/1990/7/Add.9) before the Committee contained not only the legal regulations relating to articles 13, 14 and 15 of the Covenant but a number of statistical data and addressed the questions raised by the Committee.

6. Mr. WISNIECKI (Poland) said that the report before the Committee covered a period in which Poland had been passing through momentous changes affecting all aspects of political and economic life. He would indicate how those changes had affected education in the past critical two years in the light of the questions put by the Committee (E/C.12/WG/1992/CRP.4/Rev.1).

7. To begin with a brief description of the Polish educational system, schooling started with kindergarten classes for three- to six-year-olds. The last year of kindergarten education prepared children for primary education and was also open to children not previously attending kindergarten. Such classes were called zero classes; they had to be made available by law for all children but were not compulsory. Over 95 per cent of six-year-olds were, however, attending such classes. The next stage was primary education, covering a period of 8 years, for children aged 7 to 15. During the first three years pupils received elementary education from one class teacher but from then on had different teachers for different subjects. Post-primary education was provided in three types of schools. General secondary schools provided four years of general secondary education up to the matriculation examination which opened the avenue to higher education. Vocational secondary schools provided technical training in working skills as well as general secondary education, the course of study lasting four or five years depending on the specialization chosen. On completion of the course it was open to students to take the matriculation examination entitling them to a place in higher education or receive a course completion certificate. Lastly, there were basic vocational schools providing three-year courses of training to produce skilled workers for specific sectors of the economy. Such schools did not offer full secondary education and their leaving certificate entitled the holder to apply for a place in a general or vocational secondary school but not in a higher educational institution. Higher education in Poland was confined to universities only, institutions offering other forms of third-level education did not exist. Special schools existed at all levels of kindergarten, primary and secondary level for children with disabilities.

8. There had been two important recent developments in legislation on education in Poland. A Bill on higher education had been adopted on 12 September 1990 and another on the educational system on 7 September 1991. The latter had authorized private persons and institutions to establish non-State schools. Such schools were obliged to provide education free of charge with equal access for all children. Qualified teachers were to be employed, the State teaching curriculum followed and the system of pupil assessment established by the Minister of National Education adhered to. Such schools received a State subsidy equal to the average cost of educating a student in the State system multiplied by the number of students in the school. Provided the State school curriculum and system of assessment was followed, non-State school pupils might sit for State certificates and diplomas. In 1991-92, there had been a total of 1,577 non-State schools in Poland, comprising 810 primary schools, 710 general secondary schools and 57 vocational schools. Though few in number, such schools were important in the Polish educational system since they frequently served as a vehicle for change and reform and provided an element of healthy competition for the State schools.

9. In the wake of the new Bill on the educational system, an Act had been adopted on 14 April 1992 providing for religious education within the teaching programme of State primary and post-primary schools. In primary schools religious education would be available for students at their parents' request and in post-primary schools at the request of either parent or student. The teaching of religious subjects was to be provided for groups of not less than seven students, under that number inter-class or inter-school groups would be formed. Attendance or otherwise at religious education classes was not to cause discrimination. Apart from religious education, education in ethics was available to students at the request of student or parent. Students were not obliged to attend classes on religious education or ethics; other school activities were to be organized for non-participants. Religious education followed curricula and textbooks approved by the various religious authorities, who were to keep the Ministry of Education informed on the subject. Students' achievement in religious or ethics education was marked on their yearly certificate of achievement without identification of the type of instruction concerned and was not to affect their further career.

10. Another result of the Bill on education, was the passing on 24 March 1992 of an Act on educational measures to promote the national, ethnic and linguistic identity of minorities. The Act obliged all pre-school institutions and schools to provide suitable conditions in both class and out-of-class activities for their pupils to preserve and develop their national, ethnic and linguistic identity as well as to become acquainted with their nation's history and culture. The head of the regional educational board was responsible for ensuring implementation of those measures. School principals were to provide teaching for ethnic minorities on receipt of a written request by parent or guardian in kindergarten or primary schools when not less than 7 pupils required it and in post-primary schools for a minimum of 14 students. For smaller numbers inter-class or inter-school teaching was to be provided. The various forms such teaching could take included teaching through the medium of the language of the ethnic minority in kindergartens and schools, provision of bilingual kindergartens and schools, schools with additional teaching in the language of the ethnic minority and inter-school

groups and centres providing teaching of the language of a given ethnic minority. Under the Act, ethnic minority education covered all forms of pre-school, primary and secondary education. During the 1991-1992 school year, ethnic minority education had been provided in 127 primary schools, in 11 of which teaching was through the medium of the language of the ethnic minority, and in 7 general secondary schools, 4 of which taught through the minority language. In answer to the Committee's question 10 concerning education of the German minority, 10 schools only provided additional teaching of German, no teaching was given through the medium of German and there were no secondary or post-primary schools catering for the German minority.

11. In describing the present Polish school system, many of the questions put by the Committee had been covered. Of the other questions, the sixth, which asked what percentage of the national budget was allocated to education, was difficult to answer not just because of budget restrictions but also because the data available did not clearly reflect the actual situation. The report before the Committee (E/1990/7/Add.9) gave an estimated expenditure on education in 1992 of 9.5 per cent of the national budget. More recent estimates put that figure at 10.3 per cent, which did not in fact indicate an increase in the amount spent on education but rather that cuts made in the course of financial adjustment had fallen less heavily on the education budget than on others. The situation in education was not good. The Ministry of National Education had been obliged in 1991 to reduce the number of teaching hours per week by two and most extra-curricular activities had been abolished. Such activities were still being offered in many schools but for a fee, which helped the school budget but would appear to contravene students' constitutional right to free education. In addition responsibility for kindergartens had been transferred to local authorities in 1991, but the financial situation of many districts was such that they were unable to maintain many kindergartens; over 2,000 had been closed down, principally in rural areas, thus reducing the educational opportunities of children from such areas.

12. Under the centralized economy of the old system, more than half of primary school pupils had received vocational training and had then immediately entered the work force. That had not been beneficial for the educational level of society as a whole. Following the recent reform, which gave high priority to education, there was a shift in the balance between vocational training and secondary schooling to a heavier emphasis on the latter. Furthermore, the tendency towards specialization had been reversed so that young people had greater flexibility when entering the labour market. Statistics on that question showed that in 1989, 60 per cent of primary school pupils had gone on to vocational school and only 18 per cent had begun a secondary school education, whereas by 1992, only 43 per cent had chosen vocational training and 26 per cent had started secondary school. More than 98 per cent of primary school pupils continued their education in some form after finishing primary school.

13. The percentage of pupils in secondary school who went on to higher education had increased from 10 per cent in 1991 to 12 per cent in 1992, and it was to be hoped that that percentage would rise as the new educational reform took effect.

14. One new development had been the creation of teachers' colleges, which had been opened to provide training for teachers at both primary and secondary school levels. In the past, university courses had made no distinction between future teachers, researchers or translators, and they had offered no practical training. Under the new system, emphasis was placed on conveying practical skills.

15. Concerning the question of the brain drain, he said that that phenomenon posed a difficult problem. The best solution would be to increase salaries and improve the general financial situation of those concerned so that they would have no reason to leave Poland, but unfortunately no money was available to do so.

16. Mrs. NIEWIADOMSKA (Poland) said that a number of recent legislative reforms had been instrumental in bringing about improvements in the economic, social and cultural situation and promoting democracy in Poland. Those reforms had eliminated centralist and bureaucratic tendencies and encouraged local autonomy and privatization.

17. Turning more specifically to the area of culture, she said that new legislation had done away with censorship. The State monopoly on publishing, printing and recording activities had been abolished. Licences were no longer needed for art galleries. Laws had been adopted for the preservation of historic monuments. Theatres, operas, philharmonic societies, libraries, clubs, centres for the documentation of monuments, etc. were financed by a special fund in the national budget. It was also possible to make donations. New legislation had been adopted on cultural institutions, which could be created either by individuals or legal entities. Cultural activities could also be conducted by foundations and local Government.

18. The only area in which a special licence was required was for the cinema, for copyright purposes. It was expected that in 1993 new legislation would be adopted on copyright, which was of the utmost importance for protecting the cultural identity of nations and the economic rights of authors.

19. A State foundation provided assistance to minorities, covering expenses for newspapers, periodicals and books published in the relevant languages. Concerning the German-speaking minority, representatives of the Ministry of Culture often met with members of that minority to organize special cultural events. The Ministry of Culture and Art had enlarged its sphere of activities to include minorities in Poland and Poles living abroad.

20. Although Poland attached great importance to cultural matters, owing to financial restraints only 1.56 per cent of the 1992 national budget had been earmarked for culture. It was to be hoped that the situation would improve once the new legislation took effect.

21. Mr. KOUZNETSOV congratulated the Polish delegation on its very concrete report.

22. He had noted that the Polish representative had referred to the Polish Charter of Rights and Freedoms, and he asked what the relationship was between the Charter and the Polish Constitution. Were the two on an equal footing?

He also sought further clarification on how the Charter provided legal and organizational guarantees for human rights.

23. Referring to another comment by the Polish representative, he inquired about the direct applicability of international obligations in Polish domestic legislation. Could any Polish citizen cite an international instrument signed by Poland to argue his case? How did the courts implement such international obligations?

24. It had been stated in the presentation that the parents of young pupils could decide whether their children should attend classes in religion, whereas older pupils could decide for themselves. How were conflicts on that issue between parents and children resolved, and were there adequate guarantees that children could choose without parental pressure?

25. How did teachers' salaries compare to those of skilled workers and civil servants?

26. He wondered whether the Polish delegation could provide any information on questions 6 and 12 of the list of issues, although he was aware that that might be difficult at the current time.

27. Concerning the brain drain, which was also affecting his country, he asked whether Poland had undertaken any measures to combat that problem that it might wish to share with the Committee.

28. Mr. SIMMA expressed his appreciation of the frankness with which the Polish representatives had described the situation in their country. On a previous occasion the representatives of a neighbouring State party had given no indication that they were experiencing difficulties.

29. The Committee had been informed that in Poland rights devolving from treaties could be invoked before the courts except in the case of treaties that gave rise only to obligations binding on the State. Was that taken to mean that the International Covenant on Economic, Social and Cultural Rights did not give rise to such rights, and if so how was the resulting situation viewed in the light of the indivisibility of human rights? Would Poland accede to the European Social Charter, and had censorship been totally abolished?

30. Mrs. BONOAN-DANDAN, after thanking the Polish delegation for the sincerity of its replies, requested some information on sex education in Poland, particularly with regard to AIDS, and on the measures taken to promote human rights education. Some information on the economic situation of artists would also be welcome. For example, how did their incomes compare with incomes in other occupations?

31. Mr. TEXIER congratulated the Polish delegation on the quality of its report and of the supplementary information supplied, as well as on its willingness to admit that problems existed. He had participated in the consideration of Poland's first report in 1982 and had asked a question

regarding censorship but had not been satisfied with the reply. A big change had obviously occurred, since what was now being discussed was the real situation in the country.

32. Commenting on the incorporation of the Covenant into Polish legislation, he said that the Charter of Rights and Freedoms was very important since the Committee considered that most of the rights set forth in the Covenant could be dealt with by the courts and was therefore reflecting on the possibility of promoting an optional protocol to it.

33. He associated himself with Mr. Kouznetsov's question regarding the status of educators and requested confirmation that allocations for education had fallen as a percentage of the total budget. He would also be interested to know how copyright and other forms of intellectual property would be protected. In particular, was there any specific legislation on patents? In any case, developments in Poland were giving rise to optimism.

34. Mr. MRATCHKOV thanked the Polish delegation for the frankness with which it had described the situation with regard to the implementation of articles 13 to 15 of the Covenant, although it would have been better if the Committee could have had the replies in writing in advance.

35. The brain drain was occurring in a number of eastern European countries. He would appreciate some further information on how it affected culture and on the new legislation on trade unions and employers' associations, especially with regard to educators and artists. For example, did the latter have the right to strike? It would also be interesting to know whether, in view of the changes taking place, there was any programme for revising school textbooks and for training teachers in the new conditions.

36. Mrs. IDER associated herself with previous speakers' comments regarding the sincerity of the Polish delegation's replies. Private education was apparently developing, and she would like to know what percentage of the total school population it accounted for and whether all children, including the children of families that could not afford to avail themselves even of free education, attended school up to the age of 16. Some information on the degree of independence enjoyed by universities would also be welcome, as well as some information on whether the children of aliens, including temporary residents, were entitled to free education.

37. Mr. RATTRAY joined previous speakers in complimenting the Polish delegation on its presentation, although the report had been largely overtaken by events. It had been admitted that some deterioration had occurred in economic conditions, with adverse consequences for education and culture, and that the reforms introduced had been accompanied by some casualties. It was important to know whether those effects would be long-lasting and, in particular, whether there was any evidence of an increase in anti-social behaviour as a result of cut-backs in education budgets. In the context of the general dismantling of the centralized system, did the State reject the notion that it had the primary duty to provide funds for education, and to what extent was the education system affected by the political attitudes of educators and administrators to the new situation?

38. Mrs. JIMENEZ BUTRAGUEÑO, after congratulating the Polish delegation on the quality of its presentation and noting that the change-over in Poland had led to difficulties, inquired about the situation with regard to adult education. In paragraph 16 of the report it was stated that in the school year 1988/1989 there had been 19,354 adult pupils of 216 primary schools - persons who had not completed primary school at the appropriate age for various reasons. She would like to know the age of the adults concerned and whether they studied in the same classes as young people or in special classes. Moreover, was any use made of the services of retired teachers, and did retired people in general have any privileges with regard to visiting museums and attending cultural events?

39. Mr. FOFANA praised the quality of the Polish delegation's report and replies. He wondered how far articles 13 to 15 of the Covenant had provided inspiration for the Polish Charter of Rights and Freedoms. In particular, he would like to have some further information on the implementation of the principle of free education in the present transitional period. It appeared that only State schools were subsidized in Poland, and he wished to know whether any measures were being envisaged to change that situation.

40. The CHAIRMAN announced that the Committee had concluded the current stage of its consideration of the report of Poland. The Polish delegation would return at the next meeting in order to answer the questions put by members.

ORGANIZATION OF WORK (agenda item 2) (continued)

41. The CHAIRMAN announced that the dates for the pre-sessional working group for the Committee's ninth session would be 28 June to 2 July 1993 and for the ninth session itself 22 November to 10 December 1993.

42. He recalled that the Committee had decided to consider the situation in the four States parties whose reports were the longest overdue. However, since three of the four most overdue reports were from a single region, he suggested instead to consider the State party whose report was most overdue in each of the four regions (the fifth region, eastern Europe, having virtually no States in arrears).

43. It was so decided.

44. The CHAIRMAN suggested that as soon as concluding observations were available in the language in which they had been drafted, they should be distributed to members and at the same time submitted for translation. Draft concluding observations would not be adopted until all the language versions were available, except in cases towards the end of the session where that was not possible. Since the Committee should try to develop some form of consistent style for its concluding observations, it would be preferable to take up as many concluding observations as were available at the same time.

45. He drew attention to an article appearing in the Tribune des Droits Humains on the work of the Committee. The article, which had been distributed to the members of the Committee, had been written by Mr. Scott Leckie, who had undoubtedly done more to publicize the Committee's work than anyone else. The Committee was grateful to him for his efforts.

46. Mr. TEXIER associated himself with the Chairman's thanks to Mr. Scott Leckie. Recalling that in the difficult discussions with the Dominican Republic, the source of most of the Committee's information had been the non-governmental organizations, he said that if the Committee proposed to examine the situation of four non-reporting States parties, the international and national non-governmental organizations should be notified so that they could provide details about those States. The Secretariat should be requested to write to the appropriate national non-governmental organizations.

47. The CHAIRMAN said that he agreed wholeheartedly and suggested that the Committee should take matters into its own hands, since pleas to the Secretariat had gone unheeded. It was consistent with the procedure of all committees to seek wider inputs from non-governmental organizations and other sources. During the current session, he would write to non-governmental and other organizations and to the States parties concerned informing them that the Committee planned to consider their situation. The States parties in question were Kenya and Lebanon, which had become parties to the Covenant in 1976, Surinam, which had become a party in 1977 and Belgium, which had been a State party since 1983. None had submitted a report to date. The procedure of the Committee on the Elimination of Racial Discrimination, which was the leader in the field, was to request one member of the Committee to act as a rapporteur for a specific country. The result was a dossier of 20 to 40 pages which contained the facts the member had collected and identified issues requiring further elaboration. Ideally, such a report would be available by the time the pre-sessional working group met in late January 1993; it could then be made available to the State party. The procedure need not be followed exactly: members of the Committee might simply be asked to prepare a report with as much information as possible and to draw up a list of questions they would like the State party to answer, and which the Committee would itself address in the event that the State party declined to participate. Members might reflect on the matter and indicate their views later in the session. In any case, the Committee would make every effort to collect a balanced and comprehensive range of alternative sources of information relating to each State.

48. Mrs. JIMENEZ BUTRAGUEÑO said that personally she was quite satisfied with the Secretariat. She had understood that the Secretariat was in some way connected with the non-attendance of a representative of the Committee at the preceding session of the Preparatory Committee of the World Conference on Human Rights and she asked for clarifications on that point.

49. The CHAIRMAN said that he had been notified of the date of the session, not by the Secretariat but by the Thomas Cooke travel agency. The following day a letter had arrived from the Secretariat, one week in advance of the session; it was by then too late to designate another person to represent the Committee, a fact which he regretted. Although it was scant consolation for the Committee, the other chairpersons who had been present at the session had been unanimous in feeling deeply frustrated at the way that they had been ignored. It was unlikely that he would be able to attend the next session of the Preparatory Committee, but he would endeavour to ensure that one or more members represented the Committee on that occasion.

50. Mrs. JIMENEZ BUTRAGUEÑO noted that she had received papers from two important non-governmental organizations for elderly persons: the International Federation of Associations of the Elderly and the United States Association of Retirees. Since 1992 marked the tenth anniversary of the World Assembly on Aging, it would be appropriate if the World Conference on Human Rights recognized the importance of the event. The present moment might not be the time to bring up the subject, but the elderly should have a place on the agenda. Although there were United Nations conventions on women and children, there was no equivalent convention on the elderly, who complained that they had been disregarded. The Committee had a duty to deal with the problem. Harmony should exist between working life and life in retirement: the population was aging rapidly and it was important that the elderly should live in good health and contribute to society.

51. The CHAIRMAN assured Mrs. Jimenez Butragueño that her remarks were entirely in order and that the Committee would rely on her to continue to draw its attention to the question.

52. Mr. SIMMA urged the members of the Committee to study the paper prepared by Mrs. Jiménez Butragueño on the economic, social and cultural rights of the elderly and the old (E/C.12/1992/WP.1) and to draft a general comment on it.

53. On he question of overdue reports, he observed that it might be too easy for States which were from 9 to 15 years late with their reports to receive a letter from the Committee containing a list of questions already formulated. On the other hand, the Committee might consider dispensing with reports altogether, addressing questions to governments instead and then waiting for more detailed replies. Most reports were only useful after they had been updated. The Committee might undertake a thorough revision of its working methods.

54. The CHAIRMAN observed that the kind of question directed at non-reporting States would not seem to be doing them a favour. Mr. Simma's other suggestion, however, was important. It was true that in relation to many States there were only a limited number of specific questions that it was profitable to pursue. For example, at the next session the reports of Australia and Canada would be considered. Federal States provided very simplistic information in order to avoid having to submit a 5,000-page report. If an informed observer concluded that there were only five or six important questions on Australia which needed an in-depth dialogue, it would be more productive to send a message with a specific focus. He thanked Mr. Simma for his suggestion and would welcome further discussion on the subject.

55. Mr. NENEMAN recommended that the Committee should be cautious about changing its methods of work. He supported the idea of hauling over the coals those States which had refused to comply with the Covenant but, in order to avoid creating confusion, the guidelines should not be changed too quickly. The existing guidelines were broad enough to constitute questions in themselves.

56. The CHAIRMAN suggested that an intermediate position might be to use the list of questions to pursue specific issues in future in a narrower and more precise way.

57. Mrs. BONOAN-DANDAN said that she had been invited to observe and make recommendations on the writing of the first Filipino report on the implementation of the Convention on the Rights of the Child. She had watched the bureaucrats grappling with the guidelines, and when they had asked the non-governmental organizations to participate their difficulties were such that it was thought the whole report needed to be rewritten. Yet the guideline questions for the Committee on the Rights of the Child were not as detailed as those of the Committee on Economic, Social and Cultural Rights.

The meeting rose at 12.50 p.m.